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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,748	10/20/2003	Abe Nishiki		9269

7590 08/17/2011

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EXAMINER	
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ART UNIT	PAPER NUMBER
3734	

MAIL DATE	DELIVERY MODE
08/17/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/687,748
Filing Date: October 20, 2003
Appellant(s): NISHIKI, ABE

Clyde Coughenour
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 4, 2010 appealing from the Office action mailed June 8, 2010.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 1-5 and 11-16.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the

subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner.

The enablement rejection of claims 3-8 and 12 is withdrawn. Applicant has convincingly argued that the use of two pivot pins in a ratchet—a first pin coupled to the rack and a second pivot pin coupled to the pawl—would have been obvious to one of ordinary skill in the art.

The obviousness rejections of claims 6-10 are withdrawn.

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

6,663,562	Chang	12-2003
6635072	Ramamurti et al.	10-2003
6748829	Seber et al.	6-2004

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 2, and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Chang (US 6,663,562).

Chang discloses a phimosis curer (Figure 1) comprising first and second handle grips 20, first and second jaws 12, 18, and first and second blades 78 wherein the handle grips, jaws and blades are joined to one another as claimed. The blades extend upward from the jaws so as to be insertable into a foreskin opening. Moving the handle grips toward one-another causes the jaws to move away from each other. A ratchet means 30 is disposed between the handle grips adjacent the ends of the handle grips that are attached to their respective jaws and is designed to selectively prevent the handle grips from moving away from each other. The ratchet means pivots about pivot point 14 as the handle grips are moved, and since the ratchet means is disposed between the handle grips, the ratchet means is fairly considered to pivot between the handle grips as claimed. Examiner notes that claim 1 does not require that the ratchet means pivots relative to the handle grips. The blades comprise hook means (enlarged paddles shown in Figure 7A) wherein the hook means comprise tip sides, front sides and rear sides such that the tip sides and rear sides protrude as shown in the following annotated copy of Figure 7A.

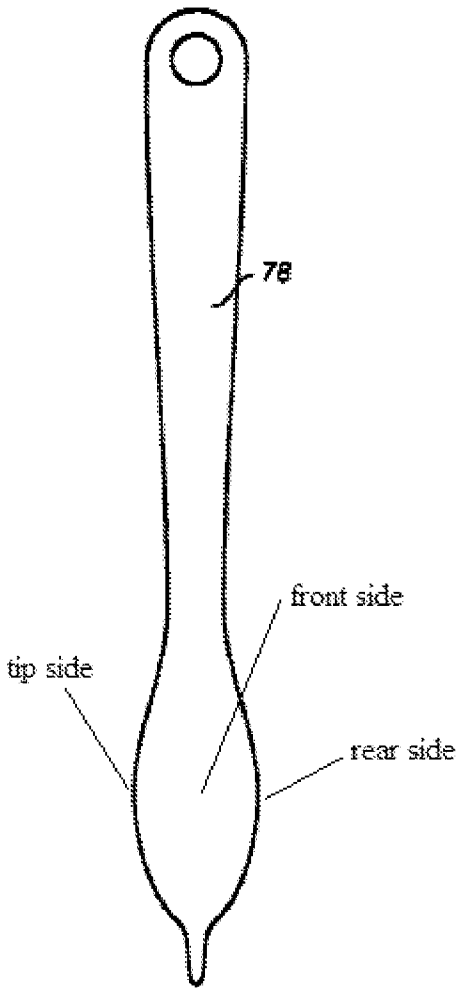

FIG. 7A

The construction of these hook means is capable of preventing the blades from slipping out of a foreskin opening when the blades are separated within a foreskin opening so that the device will not damage the foreskin. There is a fulcrum pin 14 attaching the first handle grip and the second handle grip so that the first handle grip the first jaw may be pivoted relative to the second handle grip and the second jaw. The

entirety of the device, including the grips, jaws, blade and hooks, forms an integral unit since all of the elements work together to form an integrated device.

Claims 3, 5, and 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chang (US 6,663,562) in view of Ramamurti et al. (US 6,635,072).

Regarding claims 3 and 5, Chang discloses the invention substantially as claimed including the curved rack having a smooth side, an irregular cog surface 36, and the pawl being attached to the second handle grip by a pivot pin. Chang fails to disclose that the rack is attached to the first handle grip by a pivot and that the rack pivots toward the pawl to selectively engage the pawl with the irregular cogs and away from the pawl to remove the rack from contact with the pawl. Ramamurti discloses a similar device and teaches that the rack may be pivotally mounted at a pivot pin 34 such that it pivots to engage a pawl with cogs on the rack and away from the pawl to remove the rack from contact with the pawl. It would have been obvious to one of ordinary skill in the art to modify the apparatus of Chang by pivotally mounting the rack on the first handle grip via a pivot pin since Ramamurti teaches that this was a known construction and its use would not have produced unexpected results. With regard to claim 12, Ramamurti further teaches providing a biasing spring in combination with the pivot pin attaching the rack to the first handle grip for biasing the cogs on the ratchet rack toward the pawl. (Col. 3, Lines 3-5) It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the modified device with a biasing spring in order to achieve these benefits as taught by Ramamurti.

Regarding claims 13, 14 and 16, Chang fails to disclose a spring provided with the fulcrum pin for biasing the first and second handle grips away from each other. Ramamurti discloses a related device and teaches that a spring 28 may be provided in combination with a fulcrum pin 18 to bias handle grips away from one another. (Col. 5, Lines 9-11) It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the device of Chang with a spring element as taught by Ramamurti for purposes such as keeping the blades together until a surgeon is ready to spread the target tissue. As previously discussed, the entirety of the device is one integral part since all of the elements work together to form an integrated device. Provided with this biasing spring, the device would comprise one integral shaped spring element. The handle grips are united together via pin 14, and the first and second jaws are considered to criss-cross each other since they briefly cross over one another near pin 14.

Regarding claim 15, the ratchet means comprises a rack 32 attached to the second handle grip and having a first side edge and a second side edge wherein cogs 36 are formed along the first side edge. The ratchet means is engaged by selectively placing a portion of the first handle grip (pawl 34) into one of the cogs. Chang thus discloses all elements of claim 15 except for the rack being flat. The Chang ratchet rack is curved and is fixed to the second handle grip while the pawl pivots to engage the rack. Ramamurti discloses that the rack may instead be flat and may be pivotally mounted to the second handle grip to engage a static pawl. (Figure 1) It would have been obvious to one of ordinary skill in the art to modify the apparatus of Chang by

instead using a flat rack construction since Ramamurti teaches that this was a known alternative and its use would not have produced unexpected results.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chang (US 6,663,562) in view of Ramamurti et al. (US 6,635,072) as applied to claim 3 above, and further in view of Seber et al. (U.S. Patent No. 6,748,829).

Chang and Ramamurti teach the invention substantially as claimed including resilient means to bias the curved rack toward the pawl (see ref. 28 of Ramamurti). Chang and Ramamurti fail to disclose the curved rack having a slot that is wide enough to accommodate a pawl in an engaged position and a disengaged position. Seber teaches a curved rack with a slot (see Fig. 2A and 3A) for the purpose of allowing the pawl to move within the curved rack. It would have been obvious to one having ordinary skill in the art to further modify the apparatus of Chang by providing a slot in the curved rack that accommodates the pawl as disclosed by Seber et al. in order to allow the pawl of one handle grip to remain connected to the slot of the other handle grip so that they do not become separated during use.

(10) Response to Argument

With regard to claims 1, 2 and 11, Appellant argues that Chang fails to disclose pivotal movement of the ratchet means 30 between the first and second handle grips since the ratchet 32 is stationary on one of the grips 20. Examiner notes that claim1 does not require that the ratchet means pivots relative to the handle grips. Instead,

claim 1 merely requires that the ratchet means pivots within a space between the handle grips. As can be seen from Figures 1 and 2 of Chang, the ratchet 32 pivots about fulcrum pin 14 as the handle grips are moved together and apart. Since the ratchet 32 is disposed between the handle grips while it pivots about point 14, the ratchet means is fairly considered to pivot between the first and second handle grips.

Regarding the recitation of enlarged hook means having tip sides that protrude and rear sides that protrude, an annotated copy of Figure 7A of Chang is provided showing enlarged hook means including protruding tip and rear sides.

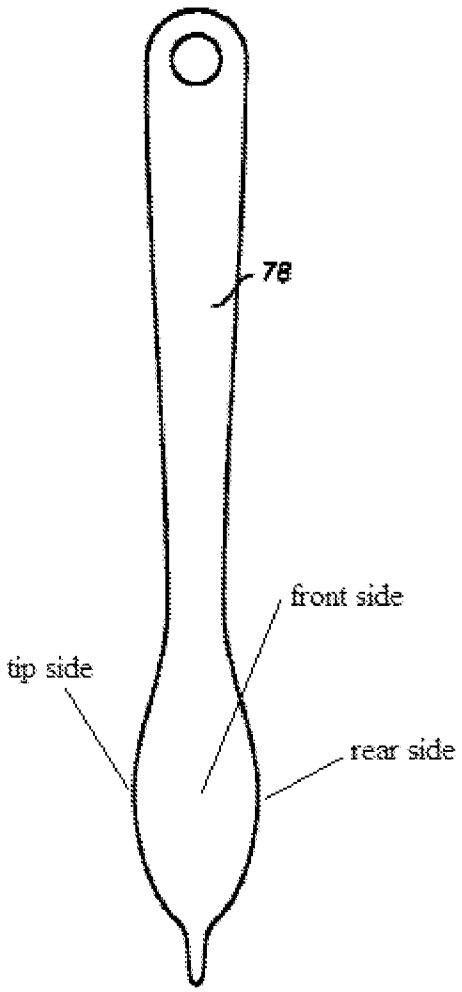

FIG. 7A

Regarding claim 11, Examiner maintains that the device as a whole may be considered to comprise an integral part since its components combine to form an integrated device. While Appellant submits that the meaning of the claim terms is to be found in the Specification, no special definition of the term 'integral' is provided in the Specification. Merriam-Webster defines a device that is 'integral' as being, "composed of constituent parts."

Regarding claims 3, 5 and 12-16, it appears that Appellant has misunderstood the Ramamurti reference. Examiner cites the Ramamurti teaching of a pivoting rack member that pivots about pivot point 34. The Ramamurti stop member 62 is not cited in the rejection. Ramamurti is relied upon for its teaching of a pivotably mounted rack member and biasing members to maintain engagement between the rack and pawn and to bias the handles to an open condition. Examiner maintains that it would have been obvious to incorporate these teachings into the Chang device as set forth in the grounds of rejection.

The rejection of claim 4 is maintained. Seber is cited as teaching a slot in the inner length of a ratchet rack. This teaching is relevant to the Chang device since it would allow the pawl of one handle grip to remain connected to the slot of the other handle grip so that they do not become separated during use.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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